

Question 14 of Section 2 on Form NUC-1, Illinois Business Registration, is based upon Section 2a of the Retailers' Occupation Tax Act, 35 ILCS 120/2a, which provides in part that "[t]he application shall contain an acceptance of responsibility signed by the person or persons who will be responsible for filing returns and payment of taxes under this Act." See 35 ILCS 120/2a (This is a GIL.)

July 11, 2003

Dear Xxxxx:

This letter is in response to your letter dated May 2, 2003. The information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

AAA is headquartered in STATE. We believe that we will have limited sales in Illinois that may be subject to your state sales tax. As a result, we are applying for an Illinois tax identification number by way of your NUC-I Illinois Business Registration application.

Upon filling out the application we noticed that Section 2, Sales Tax and Reseller Registration, Question 14 requires that an individual attest to the following statement:

'I accept personal responsibility for the filing of returns and the payment of taxes due.'

I interpret this statement to mean that if AAA, for any reason, fails to pay any taxes due, the person attesting to the statement will be personally liable for the payment of those taxes and will be liable for any penalties imposed for failure to file the appropriate tax returns. Upon inquiry to the Central Registration Phone Unit, I have been told that the attesting person is only responsible for guaranteeing that the returns are filed and that payment is made by AAA, not for actual payment of taxes in the event AAA fails to pay them. I also understand that there is no written documentation available from your department supporting this interpretation.

At this time, I would like to formally request an opinion from your legal department clarifying the monetary liability, if any, assumed by the individual(s) signing Section 2, Question 14. Please forward such an opinion to me at the address below. If you have any questions, please feel free to call me.

Question 14 of Section 2 on Form NUC-1, Illinois Business Registration, is based upon Section 2a of the Retailers' Occupation Tax Act, 35 ILCS 120/2a, which provides in part that "[t]he application shall contain an acceptance of responsibility signed by the person or persons who will be responsible for filing returns and payment of taxes under this Act."

The language of Question 14 is not meant to expand the personal liability of corporate officers or employees who have the control, supervision or responsibility for filing returns and making payments of tax on behalf of the corporation. Rather, Question 14 must be read in conjunction with Section 3-7 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-7, which states the following:

"(a) Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has the control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who wilfully fails to file the return or make the payment to the Department or wilfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon."

Question 14 seeks only to identify those persons who are responsible for filing returns and paying taxes. By signing Form NUC-1, these persons do not become personal guarantors of a corporation's tax liability under all circumstances. It is only if those persons are found to have willfully failed to file returns or pay taxes that they can be held personally liable for amounts equal to the tax, plus interest and penalties.

The Department's regulations at 86 Ill. Adm. Code 700.340(b) provide that "[t]he term willful means a voluntary, conscious and intentional act on the part of the officer or employee. It may consist of a voluntary, conscious and intentional failure to file the required return or make the payment to the Department or a voluntary, conscious and intentional attempt to take any other action to evade or defeat the tax." See the enclosed copy of 86 Ill. Adm. Code 700.340.

The Department should be notified in the event the person who has signed the personal responsibility statement leaves the business. The Department will then send a form requesting the new personal responsibility information and signature of the person assuming the responsibility.

It should also be noted that the information requested in Question 14 is authorized and required by statute. Therefore, the Department will not issue a Certificate of Registration until such information is provided.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

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